Supreme Court, U.S.
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02-1240 FEB 20 2003

No. _____

OFFICE OF THE CLERK

In The

Supreme Court of the United States

CARRIE SUE SANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA, HESTER SANDERS, HELEN RUTH SANDERS STIEFEL, and JAMES STEPHENS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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THE QUESTION PRESENTED FOR REVIEW

Whether the Court hereinbelow erred in applying principles of Tennessee State Law in determining the validity of a change of beneficiary entered by the Veterans Administration wherein the Petitioner was named as beneficiary of two life insurance policies on the life of her late husband, Marvin C. Sanders, issued pursuant to the National Service Life Insurance Act.

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PETITION FOR WRIT OF CERTIORARI

Carrie Sue Sanders respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on October 2, 2002, in order to determine an important issue presented herein, which requires this Court to determine if the doctrine enumerated in *Ridgway v. Ridgway*, 454 U.S. 46 (1981), requires Federal Courts to look to the supremacy clause of the United States Constitution, and Federal Law to determine the validity of a change of beneficiary on veteran's life insurance, when a veteran is incompetent.

CITATION TO THE OPINION OF THE UNITED STATES COURT OF APPEALS

The opinion of the United States Court of Appeals for the Sixth Circuit in case number 01-5075, styled: United States of America, Plaintiff/Appellee v. Hester Sanders, mother; Helen R. Stiefel, sister; Defendants/Appellees, Carrie S. Sanders, individually and as Co-Executor of the Estate of Marvin C. Sanders, Defendant/Appellant, James Stephens, as Co-Executor of the Estate of Marvin C. Sanders, Defendant, is not yet published; however, the United States of America has requested publication.

STATEMENT OF THE BASIS FOR JURISDICTION IN THE SUPREME COURT

The statutory provision which your Petitioner asserts confers jurisdiction on the Supreme Court to review the

opinion of the United States Court of Appeals for the Sixth Circuit on a Writ of Certiorari is 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

The original Complaint in this cause was filed by Mary Ruth Sanders Stiefel and Shirley Sanders Meeks, on October 25, 1999. (R.1, Complaint, App. 07.) The original Plaintiffs, the mother and sister of Marvin C. Sanders, deceased, brought the action against the United States of America, Department of Veterans Affairs, seeking the proceeds of two life insurance policies payable upon the death of Marvin C. Sanders. Two policies, issued pursuant to the National Life Insurance Act in the amounts of $23,020.63 and $22,044.08 were in effect, insuring the life of Marvin C. Sanders, at his death. (R.11, Amended Complaint, App. 37.)

The Court subsequently entered an Order allowing an amendment of the Complaint to reflect that the Plaintiffs names were Hester Sanders and Helen Ruth Sanders Stiefel. Said Order was entered on October 29, 1999. (R.3, Docket Sheet, App. 4.)

Thereafter, the United States of America filed a Motion to Add Parties and to Dismiss on December 27, 1999. (R.5, Motion for Leave to Add Parties, App. 11.) Said Motion sought to add additional parties, to wit, the named beneficiary under the life insurance policies on the life of Marvin C. Sanders, Mrs. Marvin Sanders, a/k/a Carrie Sue Sanders, the Appellant in this case.

Thereafter, the Court entered a Memorandum and Order on January 28, 2000 ordering that Carrie Sue

Sanders be joined as a necessary party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure, and 38 U.S.C. Section 1984, in light of her assertive claim to the VA benefits pursuant to the life insurance policies issued on the life of the deceased, Marvin C. Sanders, under the National Life Insurance Program administered by the Veterans Administration, a department of the United States of America. (R.9, Memorandum and Order, App. 28.) Further, the Court ordered that the United States of America be realigned as Plaintiff in this action, and that Hester Sanders, Helen Ruth Sanders Stiefel, and Carrie Sue Sanders be aligned and denominated as party Defendants pursuant to Rule 22 of the Federal Rules of Civil Procedure. The Court further ordered that the United States of America serve notice upon the Defendant, Carrie Sue Sanders, by written notice of a copy of the Complaint that it might file in this case. (R.9, Memorandum and Order, App. 28.)

Subsequently, on March 16, 2000, the United States of America filed a Complaint in the nature of an interpleader action, pursuant to 38 U.S.C. Section 1984(a). (R.11, Amended Complaint, App. 37.) The Answer of the Defendant, Carrie Sue Sanders, was filed with the Court on March 27, 2000. (R.12, Answer, App. 43.) Further, the Defendant, Hester Sanders, and Defendant, Helen R. Stiefel, filed their Answer to the Complaint filed by the United States of America on March 29, 2000. (R.13, Answer with Exhibits, App. 46.)

The Defendants, Hester Sanders and Helen R. Stiefel, filed a Motion on May 3, 2000 to amend and correct the Defendants name. (R.14, Docket Sheet, App. 4.) The Court, by Order entered May 5, 2000, granted the Motion, ordering

the names to be corrected in the pleadings. (R.16, Order, App. 50.)

Thereafter, the Defendant, James Stephens, on behalf of the Estate of Marvin C. Sanders, deceased, filed an Answer on June 23, 2000, with the Court, submitting to the jurisdiction of the Court all issues on behalf of the estate. (R.18, Answer, App. 241.)

Thereafter, following initial disclosures, a Scheduling Order was entered by the Court setting this case for trial on November 20, 2001. Said Order was entered on July 5, 2000. (R.20, Docket Sheet, App. 4.) In addition, on July 5, 2000, an Order was entered by the Court consenting to the transfer of this case to United States Magistrate Judge John Y. Powers. (R.21, Docket Sheet, App. 4.)

Subsequently, a Scheduling Order was entered by the Magistrate, setting the case for trial on February 1, 2001. (R.22, Docket Sheet, App. 4.)

The Defendant, Hester Sanders, and Defendant, Helen R. Stiefel, by and through counsel, filed a Motion for Summary Judgment on August 2, 2000. (R.23, Motion with Exhibits, App. 243.) The United States of America filed its response on September 7, 2000. (R.25, Response, App. 255.) Thereafter, a Motion for Summary Judgment was filed on behalf of Defendant, Carrie S. Sanders, on October 31, 2000. (R.29, Motion, App. 257.)

Following submission of Briefs by all parties, the Court, by Memorandum and Order entered on December 13, 2000, granted the Motion for Summary Judgment of the Defendants, Hester Sanders, and Helen R. Stiefel, and denied the Motion for Summary Judgment filed by Defendant, Carrie S. Sanders, and ordered proceeds of the two

life insurance policies on the life of Marvin C. Sanders, deceased, paid to the Defendants, Hester Sanders and Helen R. Stiefel. (R.36, Memorandum and Order, App. 352.) and (R.37, Judgment, App. 371.)

Subsequently, the Plaintiff, United States of America, filed a Motion to Amend the Judgment on December 21, 2000. (R.38, Motion, App. 373.) Said Motion sought to clarify the previous Order of the Court with regard to payment of the policy proceeds of the two policies on the life of Marvin C. Sanders, deceased. Thereafter, United States of America filed a Notice of Policy Proceeds giving the balance of said policies, with per diem accrual of interest. Said Notice was filed on January 5, 2001. (R.41, Docket Sheet, App. 4.)

Also on January 5, 2001, counsel for the Defendants, Hester Sanders and Helen R. Stiefel, submitted a summary of activities and fee application in this case. (R. 40, Docket Sheet, App. 4.)

Subsequently, by Memorandum Order and Judgment, filed January 5, 2001, the Court amended its prior Judgment to provide that Hester Sanders was to receive the proceeds of both life insurance policies, and ordering the Plaintiff to pay counsel for the Defendants, Hester Sanders and Helen R. Stiefel, a fee of 10% pursuant to 38 U.S.C. Section 1984(g). (R.42, Memorandum and Order of January 5, 2001 Amending the Judgment of December 13, 2000, App. 374.) and (R.43, Amended Judgment of January 5, 2001, App. 377.)

The Defendant, Carrie S. Sanders, filed her Notice of Appeal on January 16, 2001. (R.44, Notice of Appeal, App. 379.) Court costs were subsequently paid on January 19, 2001. This case is before this Court on the issue of whether

the Trial Court erred in ruling against the Appellant, Carrie S. Sanders, the last named beneficiary on the two life insurance polices on the life of her late husband, Marvin C. Sanders, deceased.

The three Court panel of the United States Court of Appeals for the Sixth Circuit filed its opinion affirming the Trial Court. Thereafter, your Petitioner sought a review of the Opinion by Motion timely filed for rehearing, and in the alternative for rehearing en banc. By Order entered on November 22, 2002, the Petition for Rehearing and Rehearing En Banc was denied.

STATEMENT OF THE FACTS

The decedent, Marvin C. Sanders, enlisted and was inducted in the Army of the United States of America on November 15, 1942. Two policies of life insurance on his life were issued pursuant to the National Service Life Insurance Act, pursuant to 38 U.S.C., Chapter 19. These policy numbers are V-5124795 and V-5201437, and were in the original face amount of $5,000.00 each. The original beneficiaries on Policy V-5124795 were Hester Gibbs Sanders, as the principal beneficiary, and Melvin Ernest Sanders as contingent beneficiary. The original beneficiaries on Policy V-5201437 were Ester (sic) Sanders, principal beneficiary, and Helen Ruth Sanders, contingent beneficiary.

At the time of the filing of the Complaint by the United States of America, the value of these policies were $23,020.63, and $22,044.08, respectively, with daily accrual of interest continuing.

Following a term of active duty service including combat in North Africa and Italy, Marvin C. Sanders was discharged from the United States Army on November 21, 1944. At the time of his discharge, he was declared incompetent and disabled.

Thereafter, a guardianship proceeding was instituted in the Chancery Court of Grundy County, Tennessee, under Tennessee State law, to declare Marvin C. Sanders incompetent, and to appoint a guardian for the management of his financial affairs. Said guardianship proceedings remained active in State Court until his death on March 23, 1999.

During his lifetime, in 1977, a beneficiary designation form was received and entered by the Veterans Administration, changing the designation of beneficiary from the Defendants, Hester Sanders, (the mother of Marvin C. Sanders), and Helen Ruth Sanders Stiefel, (the sister of the deceased), to Mrs. Marvin Sanders. The designation of beneficiary further reflects, in the block described, as relationship to insured as "wife". Said document was approved and entered by the Veterans Administration through its insurance underwriter on May 27, 1977.

This change of designation of beneficiary was made following the marriage between the deceased, Marvin C. Sanders, and the Defendant, Carrie Sue Sanders, on August 12, 1976.

During the time of the marriage between the deceased, Marvin C. Sanders, and Carrie Sue Sanders, a child was born, namely Marvin Jack Sanders, born August 7, 1984.

Subsequently, on August 22, 1994, the State Court guardian for the deceased, Marvin C. Sanders, Steven Witt, signed a further designation of beneficiary naming the Defendant, Carrie Sanders a/k/a Carrie Sue Sanders, the wife of Marvin C. Sanders, which was received and duly entered by an insurance official of the Department of Veterans Affairs.

Carrie Sue Sanders is the last named beneficiary pursuant to the records of the Veterans Administration, for the National Life Insurance policies issued insuring the life of Marvin C. Sanders, deceased. Further, at the time of the death of Marvin C. Sanders, Defendant, Carrie Sue Sanders was the wife and heir of Marvin C. Sanders.

ARGUMENT

Your Petitioner would assert that a review of the facts in this case is not in dispute. The issue before the Court on this Petition for Writ of Certiorari is succinctly stated as follows: that the Courts hereinbelow applied principals of State Law under the laws of the State of Tennessee, the resident of the deceased veteran, to determine the validity of the change of the beneficiary to his military life insurance policy to determine if the State Court guardian properly made changes, naming his wife, your Petitioner, as beneficiary. Your Petitioner asserts that under the *Ridgway v. Ridgway* decision, cited supra, that this Court has held that State Courts may not apply principles of State law with regard to military life insurance policies issued under Federal law. In this case, your Petitioner would urge that this Court take the Petition for Writ of Certiorari to review the *Ridgway* decision, cited supra.

This is a matter of great importance not only to your Petitioner, but to others in similarly situated circumstances, and it raises an important policy whether Federal Courts should look to one rule to be applied uniformally in determining the validity of changes to beneficiaries designation on life insurance policies issued to military personnel.

Premises considered, the Petitioner prays that this Court grant a Writ of Certiorari addressed to the United States Court of Appeals for the Sixth Circuit because the United States Court of Appeals has decided an important Federal question that is in conflict with the decision of this Court in *Ridgway v. Ridgway*, 454 U.S. 46 (1981), in that it has departed from the expressed principles of law espoused by this Court in said decision, and, in addition, that the issue raised in this Petition is of great importance in determining whether principles of State law, or one principle of Federal law, should apply in cases involving this issue.

Respectfully submitted,

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Counsel of Record

NOT RECOMMENDED FOR PUBLICATION

No. 01-5075

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HESTER SANDERS, Mother; HELEN R. STIEFEL, Sister,

Defendants-Appellees,

CARRIE S. SANDERS, individually and as co-executor of the estate of Marvin C. Sanders,

Defendant-Appellant,

JAMES STEPHENS, as co-executor of the estate of Marvin C. Sanders,

Defendant.

_____/

On Appeal from the United States District Court for the Eastern District of Tennessee

(Filed Oct. 2, 2002)

Before: GUY and BATCHELDER, Circuit Judges; QUIST, District Judge.*

PER CURIAM. Appellant Carrie S. Sanders appeals from the grant of summary judgment in favor of Hester

* The Honorable Gordon J. Quist, United States District Judge for the Western District of Michigan, sitting by designation.

Sanders and Helen R. Stiefel in this interpleader action filed by the United States of America. Appellant argues that the district court erred in applying state law to determine the effectiveness of a change of beneficiary made by a guardian for an incompetent, insured veteran on an insurance policy issued under the National Service Life Insurance (NSLI) program. 38 U.S.C. § 1904. After review, we affirm.

I.

While in the U.S. Army during World War II, Marvin Sanders purchased two NSLI policies. Marvin Sanders designated Hester Sanders, his mother, as the principal beneficiary on both policies. Helen Stiefel, his sister, was the contingent beneficiary on one policy. A brother, who predeceased Marvin Sanders, was the contingent beneficiary on the other policy.

Upon his discharge in 1944, Marvin Sanders was declared incompetent, and a guardian was appointed by the Chancery Court of Grundy County, Tennessee. In 1976, Marvin Sanders married Carrie Sanders. In 1977, Marvin Sanders's guardian, Cleveland Bank and Trust Company, submitted a Designation of Beneficiary form, which changed the beneficiary on the two policies to "Mrs. Marvin Sanders." The Veterans Administration accepted the change of beneficiary.

In 1994, a successor guardian, Steven Witt, submitted a second designation naming Carrie Sanders as the beneficiary. Witt was responding to a Veterans Administration inquiry into the identity of "Mrs. Marvin Sanders." Neither guardian received court approval of the

change of beneficiary. No one disputes that Marvin Sanders remained incompetent until his death in 1999.

Upon his death, Marvin Sanders's mother and sister filed an action against the United States claiming to be the lawful beneficiaries under the two policies. The court ordered the realignment of the parties, and the United States filed an interpleader complaint naming the mother, sister, and wife as defendants.

The case was tried by a magistrate judge with the consent of the parties pursuant to 28 U.S.C. § 636(c). The defendants filed cross motions for summary judgment. The magistrate denied the wife's motion, and granted summary judgment to the mother and sister. The magistrate found that the attempted change of beneficiary was not effective because under Tennessee law a guardian cannot change a beneficiary on an insurance policy without court approval. This appeal followed.[1]

II.

We review the grant of summary judgment *de novo*. *Smith v. Ameritech*, 129 F.3d 857, 863 (6th Cir. 1997). Summary judgment is appropriate when there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P.

[1] The district court awarded the mother and sister attorney fees equal to ten percent of the sums paid under the NSLI policies plus interest pursuant to 38 U.S.C. § 1984(g). The government asks this Court to affirm the district court's order. We decline to review this ruling because no party has challenged the award on appeal, and the district court's order stands.

56(c). In deciding a motion for summary judgment, the court must view the factual evidence and draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Appellant argues that state law does not apply to NSLI policies; and because the change in beneficiary form was filed prior to the insured veteran's death, the life insurance proceeds must be paid to her as the named beneficiary. The government and the appellees argue that the magistrate correctly applied Tennessee law to determine when a guardian is authorized to change a beneficiary under an NSLI policy on behalf of an incompetent, insured veteran.

The federal statute governing a change of beneficiary under an NSLI policy provides: "The insured . . . shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries." 38 U.S.C. § 1917(a). *See also* 38 C.F.R. § 8.19 (2001). The change of beneficiary "to be effective must be made by notice in writing signed by the insured and forwarded to the Department of Veterans Affairs." *Id.*

Neither the statute nor the regulations, however, address a change of beneficiary made by a guardian on behalf of an incompetent insured. In *Roecker v. United States*, 379 F.2d 400 (5th Cir. 1967), the guardian of an incompetent insured, with state court authorization, changed the beneficiary on an NSLI policy. The original beneficiary challenged the effectiveness of the change in beneficiary because it was not signed by the insured. The

Fifth Circuit noted that the statute does not provide for an insured who becomes incompetent:

> Although the language of the regulation, read literally, requires the insured to sign the request for change of beneficiary, Congress and the VA surely did not mean to bind the United States to every whim of a lunatic. When it declared that the insured was to have the absolute right to change the beneficiary, Congress operated "against the background . . . of [the] basic principle" in our jurisprudence that an incompetent may not validly dispose of his property.

Roecker, 379 F.2d at 404 (footnote omitted). The Fifth Circuit then considered whether federal or state law governed the question of whether a guardian may change a beneficiary under an incompetent's life insurance policy:

> Many considerations bear on the decision whether to apply state law or to fashion federal law. For example, where the particular question under the federal act depends on a status traditionally governed by state law, the federal court may infer that Congress, legislating against this background of state law, intended that law to govern. See De Sylva v. Ballantine, 1956, 351 U.S. 570, 76 S. Ct. 974, 100 L.Ed. 1415. Similarly, where the application of state law would not interfere with the federal program, but application of federal law would disrupt state agencies, state law should applied, RFC v. Beaver County, 1946, 328 U.S. 204, 66 S. Ct. 992, 90 L.Ed. 1172. But where the state law conflicts with the federal statute, the state rule will not govern. Wissner v. Wissner. And, of course, the court will fashion federal law where nationwide

> uniformity is necessary to protect a federal program. Textile Workers Union of America v. Lincoln Mills, 1957, 353 U.S. 448, 77 S. Ct. 912, 1 L.Ed.2d 972.

Id. at 405. The Fifth Circuit concluded that state law governed:

> But here the question is . . . the propriety of a guardian's discharge of his duties to his ward. A federal court would not fashion a federal rule governing the appointment of guardians for incompetents . . . . It would be equally incongruous for a federal court to attempt to develop standards for the management of an incompetent's estate.
>
> To apply state law to this question does not offend congressional policy. Here there is no overpowering reason in favor of a uniform rule of nationwide application. In fact to apply a federal standard would unnecessarily complicate the duties of guardians, who would have to adhere to one standard when dealing with most of a veteran's affairs, but to another when dealing with his government insurance policies.

Id. at 405-406. *See also Murray v. United States,* 107 F. Supp. 290 (E.D. Mich. 1950), *aff'd* 188 F.2d 362 (6th Cir. 1951) (change of beneficiary by guardian with court authority consistent with Michigan law had the same legal effect as though insured himself made the new designation).

The two cases relied upon by appellant, *Ridgway v. Ridgway,* 454 U.S. 46 (1981) and *Rice v. Office of Servicemembers' Group Life Ins.,* 260 F.3d 1240 (10th Cir. 2001), are distinguishable. In *Ridgway,* the Supreme Court held

that a state court could not establish a constructive trust for the proceeds under an insurance policy issued under the Servicemen's Group Life Insurance Act. The insured veteran had not made his children the beneficiaries as ordered under a divorce decree. The Supreme Court held that federal law specifically requires proceeds under such policies to go to the designated beneficiary. *See also United States v. Donall,* 466 F.2d 1246, 1247 (6th Cir. 1972) (questions regarding the proper beneficiaries under NSLI policies are governed by federal law rather than state divorce law).

In *Rice,* 260 F.3d at 1240, the insured veteran changed the beneficiary from his wife to his mother shortly before he committed suicide. The wife argued that the change of beneficiary was ineffective because the insured lacked the requisite mental capacity. The Tenth Circuit noted that mental capacity was not addressed in the federal statute. It, therefore, looked at federal court decisions under other federal statutes to determine "gap-filling federal law" on the issue of mental capacity. *Id.* at 1250.

Ridgway and *Rice* addressed the insured veteran's right or ability to change the beneficiary under the applicable federal statute. By contrast, in this case the veteran's inability to change the beneficiary is undisputed. His incapacity was established in state court and is not challenged by any party. Instead, the issue is the power of a guardian to change a beneficiary when an insured veteran is unable to exercise that right because of his incompetency. Guardianships, and the duties and powers of guardians, are traditionally matters of state law. *See King v. Beavers,* 148 F.3d 1031, 1034-35 (8th Cir. 1998). There is no "gap-filling" federal law on the power of guardians. We agree with the Fifth Circuit that applying

state law to this question does not conflict with the NSLI statute (or regulations) or defeat congressional policy behind the NSLI program. It is appropriate to look to state law for the limited purpose of determining whether a guardian was properly authorized to make a change of beneficiary under an insurance policy.

In *Folts v. Jones*, 132 S.W.2d 205, 207 (Tenn. 1939), the Tennessee Supreme Court considered whether an incompetent person could exercise the reserved powers under an insurance policy to change the beneficiary. The court found: "An insane person is, of course, incapable of exercising a right or power of election [under an insurance policy], but any election on his behalf should be exercised by the court." In *Grahl v. Davis,* 971 S.W.2d 373, 377-78 (Tenn. 1998), the Tennessee Supreme Court discussed the fiduciary duties of a conservator:[2]

> The purpose of appointing a conservator is "to preserve the estate of an incompetent or disabled person." . . . [A] conservator "shall have the same duties and powers as a guardian of a minor, and all laws related to the guardianship of a minor shall be applicable to a conservator." A conservator occupies a fiduciary position of trust of the highest and most sacred character . . . . The conservator should endeavor to manage the estate so that if the incompetent person recovers, he or she will find the estate as nearly as possible in the

[2] Marvin Sanders's guardian was appointed under the Uniform Veteran's Guardianship Law. TENN.CODE ANN. § 34-5-101 (2001). Like a conservator, a guardian of an incompetent veteran is empowered with the same duties as a guardian of a minor. *Rymer v. Smith,* 274 S.W.2d 643, 648 (Tenn. Ct. App. 1954).

> same condition as he or she left it. *Folts v. Jones*, 175 Tenn. 77, 132 S.W.2d 205, 208 (1939). A conservator should not change the character of the conservatee's property interests unless the change is necessary to protect and promote the interests of the conservatee . . . .
>
> A conservator is not the alter ego of the conservatee, however, and has no authority to exercise an elective right or power of the conservatee. *Folts*, 132 S.W.2d at 207. Therefore, a conservator has no authority to . . . change a beneficiary on a life insurance policy . . . . Instead, the conservator must petition the court, and the court, on behalf of the conservatee, can exercise such an election if it is clearly proven to be in the best interests of the conservatee.

Neither the 1977 nor the 1994 change of beneficiary was approved by a Tennessee court. Neither guardian, therefore, was authorized to change the beneficiary on Marvin Sanders's NSLI policy, and the grant of summary judgment ordering payment under the policies to his mother as the principal beneficiary is **AFFIRMED**.

01-5075

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. HESTER SANDERS, MOTHER, ET AL., Defendants-Appellees, CARRIE SANDERS, INDIVIDUALLY AND AS CO-EXECUTOR OF THE ESTATE OF MARVIN C. SANDERS, Defendant-Appellant, JAMES STEPHENS, AS CO-EXECUTOR OF THE ESTATE OF MARVIN C. SANDERS, Defendant.	)	ORDER (Filed Nov. 22, 2002)

BEFORE: GUY and BATCHELDER, Circuit Judges; and QUIST,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having

* Hon. Gordon J. Quist, United States District Judge for the Western District of Michigan, sitting by designation.

requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA	)	
Plaintiff	)	
vs.	)	**Case No. 1:99-c-337**
HESTER SANDERS; HELEN RUTH SANDERS STIEFEL, a/k/a MRS. MARVIN SANDERS; CARRIE SUE SANDERS, individually and as Co-executor of the Estate of Marvin Clinton Sanders; and JAMES STEPHENS, as Co-executor of the Estate of Marvin Clinton Sanders	)	
Defendants	)	

JUDGMENT

(Filed Dec. 13, 2000)

In accordance with the memorandum and order of this date (Court File No. 35), judgment under Rule 58 of the Federal Rules of Civil Procedure is hereby entered in this matter:

(1) **GRANTING** the motion for summary judgment of the defendants, Hester Sanders and Helen R. Stiefel (Court File No. 23)

(2) **DENYING** the motion for summary judgment of the defendant, Carrie Sanders (Court File No. 29)

(3) **ORDERING** the plaintiff, the Department of Veteran Affairs of the United States of America, according to the original designations of beneficiary in the 1940's on the two (2) National Service Life Insurance policies (NSLI) on the life of Marvin Clinton Sanders, to pay the insurance policy proceeds and interest accrued thereon on the two policies of life insurance on Marvin Clinton Sanders to Hester Sanders and Helen R. Stiefel.

/s/ **John Y. Powers**
United States
Magistrate Judge

ATTEST: A true copy
Certified this DEC 13 2000
[illegible]

ENTERED AS A JUDGMENT THIS 13th DAY OF DECEMBER, 2000 IN ORDER BOOK 86, PAGE 117, PURSUANT TO RULE 58, F.R.C.P.
R. MURRY HAWKINS, CLERK

BY: /s/ De'Andra Hinton
De'Andra Hinton
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA	)	
Plaintiff	)	**Case No. 1:99-cv-337**
vs.	)	
HESTER SANDERS; HELEN RUTH SANDERS STIEFEL, a/k/a MRS. MARVIN SANDERS; CARRIE SUE SANDERS, individually and as Co-executor of the Estate of Marvin Clinton Sanders; and JAMES STEPHENS, as Co-executor of the Estate of Marvin Clinton Sanders	)	
Defendants	)	

MEMORANDUM and ORDER

(Filed Dec. 13, 2000)

I.

Introduction

Currently pending before the Court are:

(1) The motion of Defendants Hester Sanders and Helen Ruth Sanders Stiefel for a summary judgment (Court File No. 23) filed on August 2, 2000, with a memorandum in support thereof (Court File No. 24);

(2) The motion of Defendant Carrie Sue Sanders for a summary judgment (Court File No. 29) filed on October 31, 2000;

(3) The supplemental brief of Defendants Hester Sanders and Helen Ruth Sanders Stiefel in support of their motion for a summary judgment (Court File No. 30) filed on November 22, 2000;

(4) The *amicus curiae* brief of plaintiff, the United States of America, concerning the issue of beneficiary designation (Court File No. 31) filed on November 30, 2000; and,

(5) Defendant Carrie Sue Sanders brief in support of her motion for summary judgment (Court File no. 34).

Accordingly, the summary judgment motion of Defendants Hester Sanders and Helen Ruth Sanders Steifel and the summary judgment motion of Defendant Carrie Sue Sanders are now ripe for review. For the reasons stated:

(1) The motion of Defendants Hester Sanders and Helen Ruth Sanders Stiefel for a summary judgment (Court File No. 23) shall be **GRANTED**; and,

(2) The motion of Defendant Carrie Sue Sanders for a summary judgment (Court File no. 23) shall be **DENIED**.

II.

Background

A.

Statement of the Case

The deceased veteran, Marvin C. Sanders, who died on March 23, 1999, enlisted in the armed forces of the United States of America, and was issue [sic] two life

insurance policies, on his own life, under the National Service Life Insurance ("NSLI") Act. The policy numbers are V-5124795 and V-5201437, with the face amount of $5,000.00 each. At the time of the filing of this action the value of these policies was $23,020.63 and $22,044.08, respectively. On policy number V-5124795 Marvin Sanders designated his mother, defendant Hester Sanders, and his sister, defendant Helen Ruth Sanders Steifel as beneficiaries. On policy number V-5201437 Marvin Sanders designated his mother, defendant Hester Sanders, as the principal beneficiary and his brother, Melvin E. Sanders, as a contingent beneficiary. Melvin E. Sanders died on April 13, 1997.

Following a term of active duty service Marvin C. Sanders was discharged from the United States Army in 1944. At the time of his discharge Marvin Sanders was declared incompetent and disabled.

Thereafter, a guardianship proceeding was instituted in the Chancery Court of Grundy County Tennessee, under the law of the State of Tennessee, to declare Marvin C. Sanders incompetent and to appoint a guardian for the management of his financial affairs. On November 20, 1944 Judge J.L. Rollings granted the motion of Wallace Sanders to have his son, Marvin C. Sanders, declared non-compos mentis, finding-"that the said Marvin C. Sanders is now in the Veteran's Hospital in Murfreesboro, Tennessee, and that it is necessary for a guardian to be appointed for him in order that he may be released from the hospital and that his compensation or pay can be paid." (Court File No. 35). This guardianship continued until the time of Marvin C. Sanders death on March 23, 1999.

Marvin C. Sanders married Carrie Sue (Lankford) Sanders on August 12, 1976. (Court File No. 34). Thereafter, on May 23, 1977 the Cleveland Bank and Trust Company of Cleveland, Tennessee, the guardian of Marvin C. Sanders, prepared a Designation of Beneficiary and Optional Settlement which changed the designation of beneficiary on the two NSLI life insurance policies to "Mrs. Marvin Sanders," the wife of Marvin C. Sanders – defendant Carrie Sue Sanders (Court File Nos. 1, 34). The Veterans Administration entered, by an underwriter, the change of beneficiary on May 27, 1977 (Court File Nos. 1, 34).

Subsequently, on August 22, 1994 Marvin Sanders' guardian, Steven Witt, signed a further designation of beneficiary, naming defendant Carrie Sue Sanders as beneficiary of the NSLI life insurance policies (Court File No. 34)[1].

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[1] *During his September 28, 2000 deposition, Steven Witt testified that he filed the Second Designation of Beneficiary, which named Marvin Sanders wife, Carrie Sanders, as the beneficiary on August 26, 1994, in response to a request from the VA to clarify the identity of Mrs. Marvin Sanders – the beneficiary designated in May 1977, by using her first name rather than the designation Mrs. Marvin Sanders. (Witt dep., p. 12, 13). Mr. Witt further testified that as Marvin Sanders court appointed guardian he "would not have changed the beneficiary without Court approval;" however, because he only clarified the identity of the beneficiary designated in May 1977, he did not seek court approval for the August 24, 1994 designation of beneficiary. (Witt dep. p. 16).*

When Mr. Witt was further asked whether Marvin Sanders' mental incompetency continued from the time he was adjudicated mentally incompetent in 1944 throughout the remainder of his life, he replied:

> *Well, I can only assume that he was mentally incompetent in that he was never able to go before a court to have that*

(Continued on following page)

II.

Discussion

A.

Standard of Review

FED. R. CIV. P. 56(c) provides that summary judgment will be rendered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The burden is on the moving party to conclusively show that no genuine issue of material fact exists, and the Court must view the facts and all inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 475, 587 (1986); *Morris v. Crete Carrier Corp.*, 105 F.3d 279, 280-81 (6th Cir. 1997); *White v. Turfway Park Racing Ass'n, Inc.*, 909 F.2d 941, 943 (6th Cir. 1990); *60 Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987).

Once the moving party presents evidence sufficient to support a motion under Rule 56, the nonmoving party is not entitled to a trial merely on the basis of allegations. The nonmoving party is required to come forward with some significant probative evidence which makes it

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removed, with a physician stating that he was now competent (Witt dep. p. 19).

Mr. Witt also stated that in his personal opinion Marvin Sanders "was not capable of handling his affairs" and that his moods changed from day-to-day as to how he felt about family members and other people in the community. I think he could be easily influenced, that's just my opinion, if he felt like someone was doing something good for him or might do something good for him.

(Witt dep., pp. 20-21).

necessary to resolve the factual dispute at trial. *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986); *White,* 909 F.2d at 943-44; *60 Ivy Street,* 822 F.2d at 1435. The moving party is entitled to summary judgment if the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof. *Celotex,* 477 U.S. at 323; *Collver v. Darling,* 98 F.3d 211, 220 (6th Cir. 1996).

The judge's function at the point of summary judgment is limited to determining whether sufficient evidence has been presented to make the issue of fact a proper jury question, and not to weigh the evidence, judge the credibility of witnesses, and determine the truth of the matter. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249 (1986); *60 Ivy Street,* 822 F.2d at 1435-36. The standard for summary judgment mirrors the standard for directed verdict. The Court must determine "whether the evidence presents a sufficient disagreement to require submissions to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson,* 477 U.S. at 251-52; *see also Lapeer County, Mich. v. Montgomery County, Ohio,* 108 F.3d 74, 78 (6th Cir. 1997). There must be some probative evidence from which the jury could reasonably find for the nonmoving party. *Anderson,* 477 U.S. at 252; *Bailey v. Floyd County Bd. Of Educ.,* 106 F.3d 135, 140 (6th Cir. 1997). If the Court concludes that a fair-minded jury could not return a verdict in favor of the nonmoving party based on the evidence presented, it may enter a summary judgment. *Anderson,* 477 U.S. at 251-52; *University of Cincinnati v. Arkwright Mut. Ins. Co.,* 51 F.3d 1277, 1280 (6th Cir. 1995); *LaPointe v. UAW, Local 600,* 8 F.3d 376, 378 (6th Cir. 1993).

B.

Analysis

In their motion for summary judgment, Defendants Hester Sanders and Helen Ruth Sanders Steifel have moved for summary judgment contending they:

> Would show that there is no genuine issue as to any material fact and that they are entitled to a judgment [sic] as a matter of law. These defendants insist that the law is that a guardian can not [sic] change the beneficiary of an incompetent on his own life without court approval.

(Court File No. 23, p. 2). More specifically, Defendants Hester Sanders and Helen Ruth Sanders Steifel assert:

> The issue is – which of the competing groups is entitled to the National Service Life Insurance on the life of the deceased soldier, Marvin C. Sanders.
>
> . . . Hester Sanders and Helen Ruth Sanders Steifel insist that it comes down to a question of law – [t]hey aver that the right of an incompetent to change the Beneficiary of a Policy on his own life is personal and can not [sic] be exercised by a Guardian and/or committee unless a Court decides that a change is in the best interest of the ward. No Court proceedings authorized the change of the Beneficiary in this Insurance. They aver that the change of beneficiary by the Designation of Beneficiary and Optional Settlement by the Guardian was void and that the Defendants, Hester Sanders and Helen Ruth Sanders Stiefel are entitled to recover the proceeds of the National Service Life Insurance.

(Court File No. 30, pp. 1-2).

The summary judgment motion of Defendant Carrie Sue Sanders states:

> Comes now the Defendant, Carrie Sue Sanders, by and through counsel of record, and pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, moves this Court for Summary Judgment for the Defendant, Carrie Sue Sanders, in this action against the Plaintiff, on the ground that there are no genuine issue [sic] as to any material fact, and that the Defendant is entitled to judgment as a matter of law.

(Court File No. 29). Further, in her brief in support of her motion for summary judgment, Defendant Carrie Sue Sanders asserts that the decision in *Ridgway v Ridgway,* 454 U.S. 46 (1981) is controlling authority; and, based upon that decision, she is entitled to a summary judgment as a matter of law. (Court File No. 34, pp. 5-7).

At issue in this action is the validity of the Designation of Beneficiary and Optional Settlement filed with the Veterans Administration on May 27, 1997 (Court File No. 1). This document was prepared on May 23, 1997 by the Cleveland Bank & Trust Company of Cleveland, Tennessee, the guardian for Marvin Sanders, and purported to designate Defendant Carrie Sue Sanders, the wife of Marvin Sanders, as the principal beneficiary on the NSLI policies on the life of Marvin C. Sanders.

In its *amicus curiae* brief filed with this court on November 30, 2000, the United States of America stated:

> [t]he Regulations cited above [38 C.F.R. §§ 8.46 and 8.47] require a clear, written change of beneficiary served on [the Department of Veterans

> Affairs]. This requirement has spawned considerable litigation . . . That issue is apparently not before the court here.

(Court File No. 31, p. 2). Thus, the VA has conceded the Designation of Beneficiary and Optional Settlement filed by the Cleveland Bank & Trust Company with the VA on May 27, 1977 provided clear notice of the intent to change the beneficiary of the NSLI life insurance policies.

Therefore, the only question remaining is whether the Guardian – Cleveland Bank and Trust Company – was entitled to make such a change in beneficiary on behalf of its ward – the now deceased veteran, Marvin C. Sanders – without court approval which found that it was in the best interest of its ward.

"A NSLI policy is an insurance contract between the government and the insured veteran." *Fagan v. West,* 13 Vet. App. 48, 53 (Vet. App. 1999) (citing *White v. United States,* 270 U.S. 175, 180, 46 S. Ct. 274, 70 L.Ed. 530 (1926); *Wolfe v. Gober,* 11 Vet. App. 1, 2 (1997)). "[T]he insurer has no interest in the matter except in carrying out the intentions of its policyholder" *Id.* (quoting *John Hancock Mutual Life Ins. Co. v. Dougalss,* 156 F.2d 367, 369 (7th Cir. 1946)). Consequently, "[t]he construction of a life insurance policy issued by the United States is governed by federal law." *Curtis v. West,* 11 Vet. App. 129, 132 (Vet. App. 1998) (quoting *Roecker v. United States,* 379 F.2d 400, 404 (5th Cir. 1967) (citing *Wissner v. Wissner,* 338 U.S. 655, 70 S. Ct. 398, 94 L.Ed. 424 (1950)). "Questions respecting the proper beneficiaries under NSLI policies are governed by federal law rather than state law." *Id.* (quoting *Elias v. Brown,* 10 Vet. App. 259, 262-63 (1997) (citing *United Sates [sic] v. Donall,* 466 F.2d 1246, 1247 (6th Cir. 1972)).

The federal statute which governs the change of the beneficiary of an NSLI policy is 39 U.S.C. § 717 which states in pertinent part:

> (a) The insured shall have the right to designate the beneficiary or beneficiaries of insurance maturing on or after August 1, 1946, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries.

The applicable implementing regulations to the statute provide impertinent part:

> The insured shall have the right at any time, and without the knowledge or consent of the beneficiary to cancel the beneficiary designation, or change the beneficiary . . . A change of beneficiary to be effective must be made by notice in writing signed by the insured and forwarded to the Veterans' Administration by the insured or his agent, and must contain sufficient information to identify the insured.

Roecker v. United States, 379 F.2d 400 (5th Cir.), *cert. denied,* 389 U.S. 1005 (1967) (quoting 38 C.F.R. § 8.47 (1966)).

In *Roecker,* the veteran, S. Carter Sterling married in 1930 and divorced in 1936, with a daughter Bettie Stirling Roecker, resulting from the marriage. During World War II, S. Carter Sterling served in the United States Navy and in 1942 procured an NSLI policy – on which he named his father, General J.B. Sterling, as beneficiary. Beginning in April 1947, S. Carter Sterling suffered a series of strokes.

In 1950 the named beneficiary of the NSLI policy, J.B. Sterling, died. Three weeks later, S. Carter Sterling named Ms. Nola Chiles, a female friend, as the beneficiary. By 1955 S. Carter Sterling was almost totally incapacitated as the result of the numerous strokes he had suffered; and, in 1956, based upon a petition brought by his nephew, B. Sterling Tighe, the Chancery Court of the First Judicial District of hinds County (Jackson) Mississippi, declared S. Carter Sterling to be *non compos mentis* and appointed William S. Moore as his guardian.

Three months after S. Carter Sterling was declared incompetent B. Sterling Tighe petitioned the chancery court to allow the guardian to change the beneficiary of the NSLI policy to Hallie Sterling Tighe, the mother of B. Sterling Tighe and the sister of S. Carter Sterling. Upon being informed for the first time of the existence of S. Carter Sterling's daughter, B. Stirling [sic] Roecker, the Hinds County chancellor – Judge Robertson – declined to take any action to change the beneficiary of the policy.

Late in 1958 B. Sterling Tighe reactivated the petition to name his mother as beneficiary of the NSLI policy; and he consulted a newly appointed chancellor – Judge Summer – who, despite the availability of Judge Robertson, was not made aware of Judge Robertson's prior involvement in the case. In an *ex parte* proceeding in which no contrary evidence was presented Judge Summer found that S. Carter Sterling had been incompetent since 1950, and his best interest would be served by the designation of Ms. Tighe as the beneficiary. S. Cater Sterling died two weeks after Judge Summer's decree ordering that the beneficiary be changed to Ms. Tighe.

The court in *Roecker* stated:

> Mrs. Roecker argues that since the insured did not personally sign the notice of change, the change was invalid and should be given no effect. Her argument is without merit. The purpose of the statute was to confer on the insured plenary power to change the beneficiary of his policy. *Wissner v. Wissner, supra.* But the law does not provide for the eventuality that the veteran insured would become incompetent. We read the word "competent" into the Act. Although the language of the regulation, read literally, requires the insured to sign the request for change of beneficiary, Congress and the VA surely did not mean to bind the United States to every whim of a lunatic. When it declared that the insured was to have the absolute right to change the beneficiary, Congress operated 'against the background . . . of (the) basic principle' in our jurisprudence that an incompetent may not validly dispose of his property. *See e.g.,* 3 Pomeroy, Equity Jurisprudence, § 946 (5 ed. Symons 1941). Since it is evidence, at least to this Court, that Congress did not intend such an anomalous result, we need not follow the strict language of the regulation.

Roecker v. United States, 379 F.2d 400, 404 (5th Cir.), *cert. denied,* 389 U.S. 1005 (1967). The court then went on to address the issue as to whether federal law governed the question of whether a guardian may change the beneficiary of an incompetent's NSLI insurance policy. It stated:

> The federal statute is silent as to the manner in which a guardian may change the beneficiary of an incompetent's insurance policy. The question

> arises, therefore, whether the court should incorporate state law to resolve that issue or fashion an independent federal doctrine as part of federal common law. In exercising this judicial discretion is favor of state law, the federal court is not denying its competence to make an independent judgment, but is in fact making a choice clearly within its competence. 'In some cases it may see fit for special reasons to give the law of a particular state highly persuasive or even controlling effect, but in the last analysis its decision turns upon the law of the United States, not that of any state.'

Id. at 404-405 (internal citations omitted) (quoting *D'Oench, Duhme & Co. v. Federal Deposit Insurance Corporation,* 315 U.S. 447, 471 (1942)). The court in *Roecker* then noted that many factors applied to the decision whether to apply state law or to fashion federal law, particularly, the fact that "the [federal] court[s] will fashion federal law where nationwide uniformity is necessary to protect a federal program," *id.* (quoting *Textile Workers Union of America v. Lincoln Mills,* 353 U.S. 448 (1957), and found that state law should govern the issue stating:

> In *Dyke v. Dyke,* 6 Cir. 1955, 277 F.2d 461, *cert. denied,* 1956, 352 U.S. 850, 77 S. Ct. 70, 1 L.Ed.2d 61, the Court held that the mental competence of an insured veteran to change the beneficiary of his policy was to be decided by federal law. The veteran had been declared incompetent by a Tennessee state court. Following a period of confinement in a Veterans' Administration hospital, the veteran was released as competent. Thereafter he changed the beneficiary of his policy from his mother to his wife and child.

> Under Tennessee law, an adjudication of incompetence is conclusive of continued incompetence until removed by an adjudication of competence. A court had never declared the veteran competent. The federal court refused to apply state law and recognized the change of beneficiary. While there may be a sound basis for that decision, the question was different from that presented in this case. There the problem was whether the insured's own change of beneficiary was valid. But here the question is not the insured's competence, **but the propriety of a guardian's discharge of his duties to his ward**. A federal court would not fashion a federal rule governing the appointment of guardians for incompetents. *See Vestal & Foster,* Implied Limitations on the Diversity Jurisdiction of Federal Courts, 41 Minn.L.Rev. 1, 36 (1956). It would be equally incongruous for a federal court to attempt to develop standards for the management of an incompetent's estate.
>
> To apply state law to this question does not offend congressional policy. Here there is no overpowering reason in favor of a uniform rules of nationwide application. In fact to apply a federal standard would unnecessarily complicate the duties of guardians, who would have to adhere to one standard when dealing with most of a veteran's affairs, but to another when dealing with his government insurance policies.

Id. 405-406.

Furthermore, in *Murray v. United States,* 107 F. Supp. 290 (E.D. Mich. 1950), *aff'd,* 188 F.2d 362 (6th Cir. 1951), *cert. denied,* 342 U.S. 815 (1951), the wife of George Almy, Jr. filed a petition to have him declared insane,

which was granted, and the Citizens Commercial and Savings Bank was declared his guardian. George Almy, Jr. was a veteran and had a NSLI policy which was payable to his wife. Subsequently, George Almy Jr's wife was granted a divorce from her husband. The divorce decree granted plaintiff $1 "in full satisfaction of all claims in and to the property of her husband whether then owned or acquired thereafter." *Id.* at 291. Thereafter, during the life of the veteran, George Almy, Jr., and after the decree of divorce had been granted, his guardian received authority from the Michigan Courts – the probate court which had declared George Almy, Jr. insane – to change the beneficiary of his NSLI policy, which was made payable to his estate

After the veterans death, his ex-wife brought an action to recover the proceeds of the NSLI policy on the grounds that as the original beneficiary thereon, she was entitled to the proceeds thereof because the guardian had no legal right to change the beneficiary and the courts of Michigan could not give that authority to the guardian "because payment on all government insurance policies is controlled entirely be federal legislation not to be hampered or affected by local or state laws." *Id.*

The district court held "the beneficiary selected by the guardian shall receive the proceeds from the [NSLI] policy of the veteran, because when the guardian acted by order of the Probate Court this had the same legal effect as though the insured himself had made the new designation," reasoning:

> Plaintiff had her husband deemed incompetent and a guardian appointed. She obtained a divorce and was awarded $1 in lieu of all rights, title and interest in any part of his property. She followed this by her remarriage and now, after

> four years, desires to share in the proceeds of the insurance policy that was kept for the ward by the guardian on order of the same Probate Court to which plaintiff had gone in the first place for relief from future association with her husband.
>
> We cannot believe that the federal act anticipated that where a veteran is mentally insufficient to act for himself his guardian must either accept the surrender value of the veteran's insurance, if there is any, to prevent the proceeds thereof from going to the veteran's former wife, or remain helpless with the knowledge that the beneficiary's death must precede his ward's before those who chose to help bear his burdens may profit from his estate. In other words, if plaintiff's conclusion is correct the veteran had to either cash in on his policy or continue with his divorced wife as beneficiary. Must he and his rights and desires be suspended in this uncertainty or may the Probate Court act to preserve his property?
>
> We believe that not only may the Probate Court act but that it should and did act in this case properly and legally.
>
> This court is not prohibited from following the law of the State of Michigan if that law does not seek to usurp the powers of the federal government. Furthermore, there is no usurpation here. The National Service Life Insurance Act, 38 U.S.C.A. 801 *et seq.*, is deficient and such deficiency may be corrected by the state law . . .

Id. at 294.

Finally, *Ridgway v. Ridgway,* 454 U.S. 46 (1981), the case relied upon by Defendant Carrie Sue Sanders, is

inapposite here. In that case, Richard H. Ridgeway obtained a life insurance policy under the Servicemen's Group Life Insurance Act (SGLIA), the successor to the NSLI. In December 1977, Ridgway divorced his wife. The divorce order of the Maine court required, inter alia, that Ridgway keep in force any life insurance policies on his own life for the benefit of his three minor children, Hayley, Laurie, and Brady. *Id.* at 48. At the time of the divorce, Ridgway's life was insured by a $20,000 SGLI policy. Several months later, Ridgway married and changed the beneficiary designation on the SGLI policy to his new wife. Approximately one year later Ridgway died. His wife, Donna, filed a claim for the proceeds of the SGLI policy. His ex-wife, April, also filed a claim for the proceeds of the policy on behalf of the three minor children, as provided by the Maine divorce decree.

The Supreme Court upheld the right of Ridgway's wife, Donna, to the proceeds of the SGLI policy stating:

> Federal law and federal regulations bestow upon the service member an absolute right to designate the policy beneficiary. That right is personal to the member alone. It is not a shared asset subject to the interests of another . . . only Sergeant Ridgway had the power to create and change a beneficiary interest in his SGLIA insurance. By exercising that power, he hardly can be said to have committed fraud.
>
> We conclude, therefore, that the controlling provisions of the SGLIA prevail over and displace inconsistent state law.

Id. at 59-60. The situation in *Ridgway* is distinguishable from the instant case. Sergeant Richard H. Ridgway was never adjudicated to be incompetent, as was Marvin C.

Sanders. Thus, at all times Ridgway was capable of exercising his power to create and change a beneficiary interest in his SGLIA insurance. However, Marvin C. Sanders was determined under state law to be incompetent, and pursuant to state law, a guardian was appointed for him. As discussed above, the NSLI is silent as to how the veteran's power to create and change a beneficiary in his NSLI policy can be exercised when the veteran has been adjudicated incompetent. Furthermore and for the reasons set forth above, as the NSLI was silent as to how an incompetent veteran could exercise his power to create and change a beneficiary, there are no inconsistent provisions of state law to be displaced in the situation provided by this action. Stated another way, as the NSLI and its underlying regulations are silent as to how an incompetent veteran may change or designate a beneficiary, resort to the law of the state in which the veteran was adjudged incompetent does not displace the provisions of the NSLI. Therefore, it is concluded the *Ridgway* decision does not preclude this court from looking to the law of the State of Tennessee in order to determine whether the guardian of Marvin C. Sanders was required to obtain court approval for any change of beneficiary on the two NSLI policies on the life of Marvin C. Sanders.

Accordingly, it is concluded the issue of whether Marvin C. Sanders' guardian could change the beneficiary of his NSLI insurance policy should be decided with reference to state law. More specifically, it should be decided under the law of the State of Tennessee.

Defendants Hester Sanders and Helen Ruth Sanders Steifel [sic] have provided and filed with this court a certified copy – from the Department of Public Health of the State of Tennessee, in Nashville, Tennessee, of a court

order from Grundy County, Tennessee, showing that on November 20, 1944 Judge J. L. Rollings granted the motion of Wallace Sanders to have his son, Marvin C. Sanders, declared *non compos mentis* and finding "that the said Marvin C. Sanders is now in the Veteran's Hospital in Murfreesboro, Tennessee, and that it is necessary for a guardian to be appointed for him in order that he may be released from the hospital and that his compensation or pay can be paid." (Court File No. 35). Along with this order, are Letters of Guardianship dated November 28, 1944 from Grundy County Tennessee, appointing Wallace Sanders the guardian of Marvin C. Sanders, *non compos mentis*. *Id.* Thus, it is clear the deceased veteran Marvin C. Sanders was adjudged incompetent in the courts of Tennessee in November 1944.

No party has provided to this court any document showing that subsequent to the November 1944 adjudication which found him incompetent, any court of the State of Tennessee ever found him to be competent, nor have any of the parties to this action argued that Marvin C. Sanders was competent, or that he regained his competence at any time between November 1944 and the time of his death. Under "Tennessee Statutes 'an adjudication of insanity' is conclusive evidence, as a matter of law, of a continuation of that status until the person adjudged insane has subsequently be [sic] declared of sound mind by a decree entered pursuant to the provisions" of pertinent Tennessee Code sections. *Dyke v. Dyke*, 277 F.2d 461, 464 (6th Cir. 1955), *cert. denied*, 352 U.S. 850 (1956) (quoting *Jackson v. Van Dresser*, 219 S.W. 2d 896, 899, 188 Tenn. 384, 392 (Tenn. 1949). *See also, Rymer v. Smith*, 274 S.W. 2d 643, 646 (Tenn. Ct. App. 1954) (. . . a valid adjudication under the regular guardianship act establishes beyond

cavil legal insanity of the person adjudged until such sanity is judicially restored and makes the acts of any such person adjudged void).

Further, there is no indication in the record that the Designation of Beneficiary and Optional Settlement filed by the Cleveland Bank & Trust Company with the VA on May 27, 1977, was entered pursuant to a court order approving the change of beneficiary. And, there is no indication in the record that Marvin C. Sander's guardian, the Cleveland Bank & Trust Company ever sought court approval of the change of beneficiary – i.e., a finding by the court that the change of beneficiary would be in the best interest of its ward, Marvin C. Sanders. Furthermore, Steven Witt, Marvin C. Sanders' guardian at the time, testified that while he filed the Designation of Beneficiary in August 1994 he did not seek court approval for that second designation of beneficiary. In Tennessee

> [a] conservator is not the alter ego of the conservatee, however, and has no authority to exercise an elective right or power of the conservatee. *Folts* [*v. Jones*], 132 S.W.2d [205,] 207 [Tenn. 1939]. Therefore, a conservator has no authority to terminate joint accounts in which the conservatee has an interest or to change a beneficiary on a life insurance policy. *Folts*, 132 S.W.2d at 207; *see also Howard v. Imes*, 265 Ala. 298, 90 So.2d 818 (1956); *In Re: Estate of Wright*, 430 Mich. 463, 424 N.W.2d 268 (1988); *Hendricks v. Grant County Bank*, 379 P.2d 693, 697 (Okla. 1963); *Matter of Guardianship of Rich*, 520 N.W.2d 63 (S.D. 1994); *Rozycke v. Sroka*, 3 Ill. App.3d 741, 179 N.E.2d 155 (1972); *Matter of Estate of Briley*, 16 Kan.App.2d 546, 825 P.2d 1181 (1992); *Maess v. Greenfield*, 547 S.W.2d 777 (Ky.Ct.App. 1977); *Strain v. Rossman*, 47

> Or.App. 57, 614 P.2d 102 (1980). Instead, the conservator must petition the court, and the court, on behalf of the conservatee, can exercise such an election if it is clearly proven to be in the best interests of the conservatee. *Folts v. Jones*, 132 S.W.2d at 207; *see also Schliper v. Rust*, 46 Ill.App.3d 319, 4 Ill.Dec. 817, 822, 360 N.E.2d 1192, 1197 (1977); *Rozycke v. Sroka*, 279 N.E.2d at 158.

Grahl v. Davis, 971 S.W.2d 373, 377-78 (Tenn. 1998).

Similarly, in *Folts v. Jones*, 132 S.W.2d 205 (Tenn. 1939), the guardian of an incompetent sued the beneficiary of the life insurance policy on the life of the incompetent. The guardian argued that, as the named beneficiary had no present interest in the proceeds of the life insurance policy, it was in the best interest of the insured to keep the life insurance policy in force and the named beneficiary argued that the life insurance policy should be surrendered for the cash surrender value. The court stated:

> An insane person is, of course, incapable of exercising a right or power of election, but an election on his behalf should be exercised by the court. 32 C.J. 749. But to authorize such election it shall clearly appear to be for the best interests of the incompetent. 32 C.J. 749.

Id. at 207.

Likewise, in *United States v. Tighe*, 229 F. Supp. 680, 684 (S.D. Miss. 1964), which is described in detail above, the court stated:

> A general statement of the law in this country regarding the power of a guardian to change the beneficiary on his incompetent ward's life insurance policy is found in the annotation styled

> Power of Guardian of Incompetent to Change Beneficiary in Ward's Life Insurance Policy, 21 A.L.R.2d 1911, where the authors of that work say:
>
> > . . . In the few cases revealed by an exhaustive search of the point under annotation, it is stated generally that a guardian of an incompetent has no power, without court authority, to change the beneficiary in an insurance policy on the life of his ward. The holdings seem to be based, and rightly so, on the theory that the right to change a beneficiary in an insurance policy is a right personal to the insured, and thus cannot be exercised by a guardian, unless a court decides that it is in the best interests of the ward. . . .
>
> *Id.* at 684.

In the instant record there is no indication that any Tennessee court found that the change in beneficiary on the NSLI policies on the life of Marvin C. Sanders was in the best interest of Marvin C. Sanders. Further, there is no indication that the guardian, Cleveland Bank & Trust, Company of Cleveland, Tennessee, ever sought, much less obtained, court approval for the Designation of Beneficiary and Optional Settlement filed by the Cleveland Bank & Trust Company with the VA on May 27, 1977. And, the guardian who filed the 1994 Designation of Beneficiary, Steven Witt, explicitly testified that he did not seek court approval for that Designation of Beneficiary as he believed it was only a clarification of a prior designation of a beneficiary and not a new designation of beneficiary. Accordingly, the Designation of Beneficiary and Optional Settlement filed by the Cleveland Bank & Trust Company on May 27, 1977 never having been approved by any court of the State of Tennessee as being in the best interest of

the Marvin C. Sanders and the Designation of Beneficiary filed by Steven Witt on August 26, 1994 also not having been approved [sic] any court of the State of Tennessee as being in the best interest of Marvin C. Sanders, it is concluded that the Designation of Beneficiary and Optional Settlement filed by the Cleveland Bank & Trust Company did not have the effect of changing the beneficiary on the NSLI policies on the life of Marvin C. Sanders as the guardian lacked the authority to change the beneficiary without court approval. Therefore, it is concluded the defendants, Hester Sanders and Helen Ruth Steifel [sic] Sanders, are entitled to a summary judgment as a matter of law.

III.

Conclusion

For the reasons stated above, it is **ORDERED, ADJUDGED**, and **DECREED**:

(1) The motion of Defendants Hester Sanders and Helen Ruth Sanders Stiefel for a summary judgment (Court File No. 23) is **GRANTED**;

(2) The motion of Defendant Carrie Sue Sanders for a summary judgment (Court File No. 29) is **DENIED**;

(3) The United States of America, Department of Veteran Affairs is directed to pay the proceeds of the two NSLI policies on the life of Marvin C. Sanders to Defendants Hester Sanders and/or Helen Ruth Sanders Steifel [sic] in accordance with the beneficiary

designations on the aforementioned two life insurance policies;

(4) This action is **DISMISSED**; and

(5) The Clerk shall enter this as a judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

ENTER.

/s/ John Y. Powers
United States
Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

HESTER SANDERS; and HELEN RUTH SANDERS STIEFEL, *Plaintiffs,*	)	No. 1:99-cv-337 *Edgar*
v.	)	
UNITED STATES OF AMERICA, *Defendant.*	)	

MEMORANDUM AND ORDER

(Filed Jan. 28, 2000)

This case involves a dispute over the distribution of proceeds from two life insurance policies issued by the federal government to a veteran of the United States Army. The insurance policies are administered by the United States Department of Veteran's Affairs ("VA"). The dispute concerns who are the proper beneficiaries designated to receive the insurance benefits upon the insured's death.

Defendant United States of America moves to join an additional party to this suit or, in the alternative, to dismiss the plaintiffs' complaint. The government wants the Court to also determine that it is only a stakeholder pursuant to 38 U.S.C. § 1984. (Court File No. 5). In other words, the United States wants the Court to convert this suit into an interpleader action brought under 38 U.S.C. § 1984.

In their complaint, the plaintiffs do not cite or expressly rely on 38 U.S.C. § 1984. The complaint is deficient because it does not contain a plain statement of the

specific grounds upon which the Court's subject matter jurisdiction depends as required by FED. R. CIV. P. 8(a)(1). Instead, the plaintiffs appear to be generally invoking the Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331.

Plaintiffs oppose the motion. Plaintiffs deny that the United States of America is a stakeholder and object to their complaint being dismissed. (Court File No.7). After reviewing the record, the Court concludes that the government's motion to join an additional party is well taken and the motion is **GRANTED**. This action falls within the parameters of 38 U.S.C. § 1984 and must be adjudicated as an interpleader action pursuant to the provisions of § 1984. Moreover, the Court agrees with the United States of America that it is only a stakeholder in this action under 38 U.S.C. § 1984.

The plaintiffs' complaint and the documents contained in the record thus far are somewhat confusing. Although the complaint only makes reference to one life insurance policy, the government contends that there are actually two insurance polices in dispute.

The following basic facts emerge from the record. Plaintiffs Hester Sanders and Helen Ruth Sanders Stiefel ("Stiefel") claim they are entitled to $10,000 in proceeds from a life insurance policy identified as Policy No. FVO5124795. Helen Sanders is the mother and Stiefel the sister of the late Marvin C. Sanders, deceased. In their complaint, the plaintiffs aver that Marvin Sanders entered military service in the United States Army in November 1942. The United States government issued him a National Service Life Insurance Policy (Policy No. FV05124795) in the amount of $10,000. When the policy

was issued, Marvin Sanders designated Hester Sanders as a beneficiary of fifty percent (50%) of the policy proceeds and designated Stiefel as the beneficiary of the other fifty percent (50%).

During his tour of military duty, Marvin Sanders became mentally incompetent and he was discharged from the United States Army in 1944. It is alleged that Marvin Sanders remained incompetent until his death. During Marvin Sanders' lifetime, the Cleveland Bank & Trust Company ("Bank") of Cleveland, Tennessee, was appointed as his guardian. On or about August 12, 1976, Marvin Sanders married Carrie Sue Lankford. The marriage precipitated a change in the designation of beneficiary on the life insurance policy.

Plaintiffs aver that the Bank, acting as guardian for Marvin Sanders, executed and filed a form with the Veterans Administration captioned "DESIGNATION OF BENEFICIARY AND OPTIONAL SETTLEMENT." A copy of this document is attached to the complaint. (Court File No.1). The beneficiary designation form attached to the plaintiffs' complaint concerns Policy No. FV05124795. The form is dated May 23, 1977, and was recorded by the Veterans Administration on May 27, 1977. In this document, the person designated as the sole, principal beneficiary of the life insurance policy is identified as Mrs. Marvin Sanders, Wife. Marvin Sanders subsequently died on March 23, 1999.

Plaintiffs Hester Sanders and Stieffel [sic] argue that the right of an incompetent insured to change the beneficiary on an insurance policy issued on the incompetent's own life is personal and cannot be lawfully exercised by a guardian unless a court decides that the change of

beneficiary is in the incompetent person's best interest. In the instant case, plaintiffs contend that no such court proceeding was ever held authorizing or approving a change of beneficiary on Marvin Sanders' life insurance policy. The Court expresses no opinion on this question of law at the present time.

Defendant United States of America says that Sanders had two policies of National Service Life Insurance ("NSLI") administered by the VA. Hester Sanders, Stieffel [sic], and Marvin Sanders' wife, Carrie Sue Sanders, have each filed claims with the VA to obtain the proceeds from the two NSLI policies. According to the United States government, the VA has not issued a final administrative decision on who is entitled to receive the benefits from the two insurance policies.

Plaintiffs have a different version of the facts. Plaintiffs acknowledge that two NSLI policies were issued to Marvin Sanders. There is, however, a factual dispute whether the VA has already paid $10,000 from one of the NSLI policies to Carrie Sue Sanders. In response to the government's motion (Court File No. 7), plaintiffs assert that the VA has mistakenly paid $10,000 from the other NSLI policy to Carrie Sue Sanders. Hester Sanders and Stieffel [sic] contend that they are the only true beneficiaries of the second life insurance policy (Policy No. FV05124795). It is the plaintiffs' position that the government's alleged negligent payment of the proceeds from the other NSLI policy to Carrie Sue Sanders does not create any liability on the widow's part to Hester Sanders and Stieffel [sic]. Furthermore, plaintiffs argue it is "very likely" that the federal government would not have been liable to Carrie Sue Sanders on the other NSLI policy already paid out to Carrie Sue Sanders because the

deceased veteran, Marvin Sanders, was incompetent and did not have the legal capacity to enter into marriage with Carrie Sue on August 12, 1976. Thus, plaintiffs argue that it is not necessary to join Carrie Sue Sanders as a party to the instant suit concerning the disposition of the $10,000 in life insurance proceeds from NSLI Policy No. FV05124795. Plaintiffs urge the Court to focus solely on resolving the narrow question of law whether the Bank, acting in its capacity as guardian of for Marvin Sanders, an incompetent person, can change the designation of beneficiary on NSLI Policy No. FV05124795 without obtaining prior court approval. In their complaint, plaintiffs aver that the designation of beneficiary form executed by the Bank as guardian for Marvin Sanders is void and plaintiffs demand that they be awarded the $10,000 proceeds from NSLI Policy No. FV05124795.

The Court concludes that the instant suit is governed by and will be adjudicated in accordance with 38 U.S.C. § 1984. Section 1984(a) provides in relevant part:

> In the event of disagreement as to claim, including claim for refund of premiums, under contract of National Service Life Insurance, United States Government life insurance, or yearly renewable term insurance between the Secretary and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the United States District Court for the District of Columbia or in the district court of the United States in and for the district in which such person or any one of them resides, and jurisdiction is conferred upon such courts to hear and determine all such controversies. **All persons having or claiming to have an interest in such insurance may be**

> **made parties to such suit**, and such as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. In all cases where the Secretary acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, **a suit in the nature of a bill of interpleader may be brought at the request of the Secretary in the name of the United States against all persons having or claiming to have any interest in such insurance** in the United States District Court for the District of Columbia or in the district court in and for the district in which any such claimant resides; however, no less than thirty days before instituting such suit the Secretary shall mail a notice of such intention to each of the persons to be made parties to the suit.

(Emphasis supplied).

Based on the record, the Court is unable to determine whether the VA has already paid $10,000 from one of the NSLI policies to Carrie Sue Sanders as alleged by Hester Sanders and Stieffel [sic]. This matter is in dispute because the government states that the VA has not yet reached a final administrative decision on who is entitled to receive the benefits from both of the NSLI policies issued on the life of Marvin Sanders. (Court File No.6). However, for purposes of ruling on the government's present motion, it is not necessary for the Court at this time to resolve this particular disputed issue of fact.

Even if the Court assumes *arguendo* that the plaintiffs' statement of facts is correct and assumes that the VA has already paid $10,000 from one NSLI policy to Carrie Sue Sanders, this does not alter or have any impact on the Court's ruling on the government's motion. There still remains, at the very least, a genuine controversy over who is entitled to receive the $10,000 in benefits from the other NSLI policy, Policy No. FV05124795. Carrie Sue Sanders has notified the VA that she asserts a claim to the proceeds from NSLI Policy No. FV05124795 which is the subject of the plaintiffs' complaint. Thus, the VA is confronted with competing claims for the proceeds from NSLI Policy No. FV05124795. Both the plaintiffs and Carrie Sue Sanders contend that they are the rightful beneficiaries to the same NSLI policy. This is precisely the type of situation that 38 U.S.C. § 1984 is designed to adjudicate by way of an action in interpleader.

Based on these facts and circumstances, Carrie Sue Sanders must be joined in this action pursuant to FED. R. CIV. P. 19(a) and 38 U.S.C. §1984(a) as a necessary party. Section 1984(a) provides that all persons having or claiming to have an interest in NSLI policies may be made parties to a suit brought under the statute. Carrie Sue Sanders is a resident of Tracy City, Tennessee, which is located within the Eastern District of Tennessee and she is subject to service of process. She has asserted a claim to the VA to recover the benefits of NSLI Policy No. FV05124795. Thus, Carrie Sue Sanders claims an interest relating to the subject of this suit and is so situated that the Court's disposition of the plaintiffs' complaint in the absence of Carrie Sue Sanders may impair or impede her ability to protect her interest and would also leave the defendant United States of America and the VA subject to

a substantial risk of incurring double or otherwise inconsistent obligations by reason of her claimed interest in the two NSLI policies. Furthermore, the joinder of Carrie Sue Sanders as a party will not deprive the Court of subject matter jurisdiction. Accordingly, the government's motion to join Carrie Sue Sanders as a necessary party to this action is **GRANTED** under FED. R. CIV. P. 19(a) and 38 U.S.C. §1984(a).

This suit will proceed as essentially an action in interpleader where the United States is only a stakeholder pursuant to 38 U.S.C. § 1984. The United States acknowledges that it is indebted upon both NSLI policies. There is simply a dispute as to the proper person or persons entitled to the life insurance proceeds. Carrie Sue Sanders has made a claim to the VA asserting that she is the beneficiary of the two NSLI policies. Hester Sanders and Stiefel contend they are the lawful beneficiaries of NSLI Policy No. FV05124795 and any change in the designation of beneficiary on this particular policy by the guardian for Marvin Sanders is null and void. Carrie Sue Sanders will be **JOINED** as a party defendant in this interpleader action so that she can present any claims she may have and protect here interests in the NSLI policies. By bringing all interested parties having claims before the Court in one civil action, the Court can fully and finally adjudicate all claims to these NSLI policies and preclude the United States government from being subjected to the risk of incurring double or otherwise inconsistent obligations by reason of the competing claims to the same NSLI policies.

The Court has the inherent authority to realign the parties according to their interests to streamline and expedite the litigation. It is necessary to reorganize and clarify the pleadings so that this litigation can proceed in

an orderly manner as an interpleader action in compliance with 38 U.S.C. § 1984. A practical method of pleading must be utilized to properly join Carrie Sue Sanders as a party. Since the Court has determined that this suit shall now proceed as an action in interpleader pursuant to 38 U.S.C. § 1984(a), the United States of America, Department of Veteran's Affairs, is hereby **REALIGNED** as the plaintiff. Hester Sanders, Helen Ruth Sanders Stiefel, and Carrie Sue Sanders are **ALIGNED and DENOMINATED** as party defendants. *See* FED. R. CIV. P. 22.

38 U.S.C. § 1984(a) provides that where the federal government decides to bring a suit in the nature of a bill of interpleader, "no less than thirty days before instituting such suit the Secretary shall mail a notice of such intention to each of the persons to be made parties to the suit." The United States of America shall comply with the thirty-day advance notice provision in 38 U.S.C. § 1984(a) by mailing a written notice to Carrie Sue Sanders on or before **February 10, 2000**, advising her that it intends to file a complaint in interpleader in the United States District Court concerning the disposition of the NSLI policies. It is not necessary for the federal government to also mail another formal notice to Hester Sanders and Helen Stiefel because as a practical matter the United States of America has already given actual written notice to these two individuals by virtue of the United States filing its motion and supporting memorandum of law. (Court File Nos. 5, 6).

Once Carrie Sue Sanders has been formally put on notice in accordance with 38 U.S.C. § 1984(a), the United States of America shall then file a new complaint in interpleader which shall supplant the complaint of Hester Sanders and Helen Stiefel. The Court expects the United

States to file its complaint in interpleader as soon as practicable, and no later than **March 31, 2000**. The United States shall promptly serve the new complaint in interpleader upon defendants Hester Sanders, Helen Stiefel, and Carrie Sue Sanders. Defendants shall then have the opportunity to answer the government's interpleader complaint and assert any counterclaims or crossclaims pursuant to FED. R. CIV. P. 22. By following this procedure, the parties will be correctly aligned according to their respective interests and the pleadings will be reorganized thereby allowing the case can go forward in a more orderly fashion and be adjudicated pursuant to 38 U.S.C. § 1984.

SO ORDERED.

ENTER:

/s/ R. Allan Edgar
R. ALLAN EDGAR
CHIEF UNITED STATES
DISTRICT JUDGE